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Electoral Justice As A Catalyst In The Promotion Of Human Rights Norms During Election: The Nigerian Experience

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ABSTRACT

Globally, election remains the standard for a smooth transition in a democracy. Several factors account for a credible, transparent and electoral process devoid of rancor. It is trite that before an electoral process commences especially in Nigeria, certain measures are put in place in order to achieve the objectives of the electoral process. Some of the measures directly impact the fundamental rights of persons participating in the elections. Fundamental Rights norms such as freedom of expression, freedom of movement, freedom of association and peaceful assembly appear to be the norms mostly impacted during elections. This paper argued that electoral justice will not be promoted and protected if the managers of our electoral process do not accord respect to the fundamental rights of voters during election. The police, who statutorily is saddled with the responsibility of providing internal security often times looked away from arresting and prosecuting those involved in electoral malfeasance. The INEC's in ability to arrest and prosecute electoral offenders through her legal officers' help to exacerbate and embolden the impunity by the electoral offenders. The judiciary, as a key component of electoral justice system is made redundant in the trial of electoral offenders who are not arrested and brought before the court for trial by the police.

The status quo is however not beyond remedy as this paper has made some recommendations towards ensuring the protection and promotion of human rights norms before, during and after elections to ultimately safeguard electoral justice.

Keywords: Electoral Justice, Catalyst, Human Rights, Norms.

INTRODUCTION

The promotion and protection of human rights norms the world over engenders good governance especially where democracy hold sway as a system of government. Respect for institutions of government and constitutionalism are some of the indices to measure the standard of peace, stability and progress both at national and international levels *vis-a-vis* human rights norms.

Election malpractice in whatever dimension call for sustained prioritizing of electoral justice as one of the key elements in maintaining credibility of the electoral process. Electoral justice involves the means and mechanisms available in ensuring that each action, procedure and decision related to the electoral process complies with the legal framework, protecting or restoring electoral rights and giving people who believe their electoral rights have been violated the opportunity to challenge such violation and eventually have their case heard and receive a ruling.[1] A sustained and committed efforts geared towards the protection and promotion of electoral integrity can be the catalyst in the realization of electoral justice. As a

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[1] O. Joseph and F. Mcloughlin, 'Electoral Justice System Assessment Guide' (2019) IDEAhttps://idea.Int Accessed 25 January 2021.

catalyst, electoral justice helps to ensure reparation and the redress of the other electoral grievances since political rights qualify as human rights.

The relevance accorded human rights is a function of adherence to the rule of law. Human rights represent demands or claims which individuals or groups make on society, some of which are protected by law and have become part of ***lex lata*** while others remains aspirations to be attained in the future.[2] The enforcement of these human rights norms devolve mainly on municipal laws[3] and occasional intervention by international legal instruments since individuals are subject of international law.[4]The importance of nurturing, through electoral justice system, education, a culture of respect and demand for the appreciation and internalization of the values of human rights cannot be overstressed.[5]

Legal Framework for the Administration of Electoral Process in Nigeria

Election remains the medium in which the people express the legitimacy and leadership succession irrespective of the method of election. This process is however not without laid down rules governing the entire process to bring about the desired objectives.

i. **Constitution of the Federal Republic of Nigeria 1999 as amended**

The Constitution of the Federal Republic of Nigeria (CFRN), remains the critical law that governs the electoral process in Nigeria. Section 40 of CFRN provides for the right of persons to form political party or association. It provides to the effect that every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union, or any other association for the protection of his interest, provided that the provisions of this section shall not derogate from the powers conferred by the constitution on the Independent National Electoral Commission concerning the political Parties to which that commission does not accord recognition. Therefore, it would be unlawful, the denial of any citizen the right to opt out, join, belong to any political party, trade union or any other association for the protection of his interest.[6]

The right to belong to a political party or trade union is however not sacrosanct. No person is justified in the exercise of his right to infringe on another person's right. The Supreme Court in *Registered Trustees of National Association of Community Health Practitioners of Nigeria & 2 others v Medical and Health Workers Union of Nigeria*[7] held that, section 40 of the constitution of the Federal Republic of Nigeria, 1999 which guarantees the right to freedom of association is not absolute.[8] Despite the limitation, constitutional provisions are expected to be inclusive and ensure the political participation of all sectors of the society in the political process.

Qualification for Election

Sections 106, 65 and 131 of the CFRN make copious provisions as to precedent conditions to contest election as a member of a state house of assembly, national assembly, be it the senate or house of representatives, governor and/or the president of the federal republic respectively. The reality about the above provisions of the constitution is that they gave legal impetus to citizens in the exercise of their political rights and stimulate interest in public affairs with a deep sense of political vigilance and thereby promote equal suffrage.

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[2] O. Eze, Human Rights in Africa (Lagos: Macmillan 1984) cited in U.O Umozurike, The African Charter on Human and Peoples' Rights (The Hague: Kluwer Law International 1997) 4.
[3] Ibid
[4]Ibid
[5] U.O Umozurike, The African Charter on Human and Peoples' Rights (The Hague: Kluwer Law International (1997)8
[6] AG Federation v Abubakar (2007) 10 NWLR 1041
[7] (2008) 2 NWLR (pt 1072)575
[8] CFRN S. 65 (1) (a)

Disqualification for Election as a Senator or member House of Representatives

The CFRN provides for the disqualification of persons who intend to contest an election into the National Assembly either as a senator or member House of Representatives where such persons have voluntarily acquired the citizenship of a country other than Nigeria or declared allegiance to such other country[9].

Other limiting factors for purposes of being elected into the senate or House of representatives include; being adjudged a lunatic or declared to be of unsound mind;[10] death sentence imposed by a competent court for offence involving dishonesty or fraud or for any other offence imposed by any court or tribunal or substituted authority[11]; discharged bankrupt so declared by under, or under any law in force in Nigeria or any other country[12]; a person employed in the civil or public service of the federation or states and does not resign, withdraw or retire from the employment at least 30 days before the date of the election[13]; a member of any secret society[14].

The registration of voters and the conduct of elections are however subject to the direction and supervision of the Independent National Electoral Commission in accordance with the constitution[15] The constitution also provides for the restriction on formation of political parties where the stipulated conditions for registration are not met by the intending political parties[16]. Political parties are obligated to have aim and objectives that are in conformity with the constitution[17].

ii. **The Electoral Act 2010**

The Constitution of the Federal Republic of Nigeria provides for the establishment of Independent National Electoral Commission[18]. It is a body corporate and capable of suing and being sued. The Electoral Act in section 2 provides for the functions of the Independent National Electoral Commission in accordance with the CFRN. The core functions include:

- The mandate to conduct voter and civic education.
- The power to promote knowledge of sound democratic election process.
- The power to conduct any referendum that is required to be conducted under the provisions of the constitution or any other law or Act of the National Assembly.

In order to ensure a credible electoral process, the commission in section 9 is empowered to compile, maintain and update continuously a National Register of voters for each state and the Federal Capital Territory and local government, which must incorporate the names of all eligible voters in any federal, state, local government or area council elections in Nigeria.

Furthermore, the registration of voters, updating and revision of the register of voters is expected to stop not later than 30 days before any election in Nigeria, and registration shall take place at registration centres designated for that purpose and shall be communicated to the general public by the commission[19]. The Act also provides for the procedures for conducting elections in Nigeria. To this end, an election in Nigeria will hold on a date appointed by INEC[20]. Every political party is expected to submit to the commission, a list of the candidates the political party proposes to sponsor at the elections, which list must be published within 7 days of receipt, provided the commission does not disqualify the candidates

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[9] CFRN S. 66 (1) (a)
[10] CFRN S. 66 (1) (6)
[11] CFRN S. 66 (1) (c)
[12] CFRN S. 66 (1) (e)
[13] CFRN S. 66 (1) (l)
[14] CFRN S. 66 (1) (g)
[15] CFRN S. 78
[16] CFRN S. 222
[17] CFRN S. 224
[18] CFRN S. 153
[19] Electoral Act 2010, S. 9 (5)
[20] O. Jegede and W. Idiaru, 'Overview of Electoral laws in Nigeria' (2020) https:///www.mondaq.com/Nigeria/ Constitutional-administrative law/987696/overvirewscyelectroal-laws-in-Nigeria > accessed 5 February 2021.

for any reason[21]. The said list is to be accompanied by an affidavit at the court, indicating that the candidate has fulfilled all the constitutional requirements for election into that office[22].

iii. The INEC Regulations and Guidelines for the Conduct of Elections 2019.

In exercising the powers conferred on it by the constitution and the Electoral Act, the Independent National Electoral Commission issues guidelines for the conduct of elections into any elective office in Nigeria[23]. The Regulations and guidelines[24] apply to all conduct of elections in the various elective offices from the president to the councilors of area councils and supersede all other regulations on the conduct of elections that have been issued by the commission until replaced by a new regulation or its amendments.

Some key provisions of the regulations and guidelines include;

i) Date of General Election

Elections into the office of the President, Vice President, National Assembly shall hold on the third (3rd) Saturday in February of any general election year while elections into the office of the governor and states House of Assembly shall hold two (2) weeks after[25].

ii. Eligibility of Voters

A person is eligible to vote if such a person is a Nigerian, registered as a voter, name duly published in the register of voters, presents a valid permanent voters card (PVC) at the polling unit[26].

iii. Where to Vote

In accordance with the Regulations and Guidelines, voting is to take place at the polling units and at the various voting points designated by the commission[27].

iv. Appointment of Presiding Officers

The Regulations and Guidelines allow for each polling units to be manned by a presiding officer and three Assistant Presiding officers. The presiding officer is expected to assign the responsibility of accreditation, preparing and issuing ballot papers to the Assistant Presiding Officers[28]. The mode of voting must be in accordance with the Continuous Accreditation and Voting System (CAVS) procedure, the election manual, and any other Guide Issued by the commission on which accreditation and voting shall commence at 8.am and close at 2.00pm[29].

Collation of Election Results

By Rule 27, the collation and declaration of election results shall be done at the following levels depending on the type of election;;

Registration Area: RA/Ward (collation for all elections) including that of councilor in the case of FCT.

Local Government Area: LGA (collation for all elections) including that of chairman in the case of the FCT.

State Constituency (collation and Declaration of State House of Assembly elections).

Federal Constituency: (Collation and Declaration of House of Representatives elections).

Senatorial District (Collation and Declaration of senatorial District elections).

Governorship (Collation and Declaration of Governorship elections.

Presidential (Collation and Declaration of Presidential election).

The regulations and Guidelines also allow for the following persons to have access to the poling units and collation centres.

Voters at polling units only

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[21] Electoral Act, 2010 s. 65

[22] n22

[23] O. Jegede & W. Idiane, 'Overvirew of Electoral Laws in Nigeria (2020) <https://www.Mondaq.com/Nigeria/ Constitutional administrative law/987696/overview-of-electoral-laws-in-Nigeria> accessed 5 February 2021.

[24] (2019)

[25] Rule 1

[26] Rule 2

[27] Rule 3

[28] Rule 4

[29] Rule 8

INEC officials on election duty
Security agents
Candidates or their accredited polling agents
Accredited journalists) media.
Accredited domestic and foreign observers[30].

Key Components of Electoral Justice System in Nigeria

Globally, electoral justice system contributes immensely in maintaining the political system and compliance to the law thereby ensure the stability of democratic governance. The absence of a global uniformed model of electoral justice system inhibits a system of electoral justice whose components cut across all other electoral justice system. Changes in electoral technology, (such as the use of electronic voting), changes in the number of internally displaced persons, registration of new political parties without experience in democratic governance which may require the implementation of particularly stringent laws and regulation to prevent campaign violation and even inter-party violence are also some of the precipitating factors for the lack of uniformed global electoral justice system. These and other changes require new approaches to ensure electoral justice system at a given period.

i. The Judiciary

The judicial functions in Nigeria are performed by the various counts established in accordance with the Constitution of the Federal Republic of Nigeria 1999 as amended. By section 6 (1) of the CFRN, the judicial powers of the federation is vested in the courts to which this section relates, being courts established for the federation. The judicial powers extended, notwithstanding anything to the contrary in the constitution, to all inherent powers and sanctions of a court of law including all matters between government or authority and to any person in Nigeria whether it is a proceeding relating to any question as to the civil rights and obligation of the that person[31].

The increasing judicial intervention in pre/post election petitions in Nigeria calls for a well positioned judicial system to be able to consistently adjudicate on a range of electoral malfeasance including electoral fraud, election rigging and other electoral offences bordering on sponsorship of candidates, such substitution, nomination, disqualification and qualification with the capacity to distort the quality of a given electoral process.

During the 1979 general elections, the judiciary was faced with the litmus test to determine the winner in an election based on which the military handed over power to civilian government in a contest Alhaji Shehu Shagari was declared the winner by the electoral body, having scored the highest number of votes cast in the election. The aggrieved candidate, Chief Awolowo and his political party challenged the declaration of Alhaji Shehu shagari, arguing that he did not satisfy section 34 of the Electoral Law to warrant being declared the winner in that election[32]. The real issue was whether by the principles of interpretation, two third of the 19 states was 13, which would fault the electoral body's declaration of Shagari as the winner of the election or 12 $^{2}/_{3}$ states which would render the presidential election as inconclusive, necessitating determining the winner through the process of electoral college[33].

The judiciary, through the supreme Court affirmed the declaration by the electoral body stating that the figure 12 $^{2}/_{3}$ rather than 13 was the intention of the legislature and that Shagari 19.94% of the votes scored in the 13th state was less by 5.0% to comply with the provisions of the electoral law, the election being conducted substantially in accordance with the law. This decision, although it fell short of the expectations from the judiciary, however, being the pronouncement from the apex court and the

[30] Rule 48
[31] CFRN 1999, S. 6
[32] J. Mbamalu, 'The Nigerian Judiciary: Impacting Elections through Court Decisions' (2012) <http://wwww. Jumbolaw. com>articles accessed 15 February 2021.
[33] Ibid

exigencies of the time, it became accepted as an important input by the judiciary toward establishing democracy in Nigeria and a subtle way of sending the military back to the barracks[34].

The judiciary gradually became the confluence point for dealing with the hydra-headed challenges in elections in Nigeria when in a gubernatorial election conducted in April 19, 2003, INEC inexplicably declared the wrong candidate, Dr. Chris Ngige as the winner, instead of Mr. Peter Obi by stating that;

> *INEC has not only a pivotal, but also a delicate role to play in ensuring a free and fair election in this country, and like Caesar's wife, it must be seen to live above board…*[35]

The penchant for substituting candidates and or ordering for fresh elections by political parties by INEC even after such elections have earlier been conducted and concluded was a subject of adjudication by the Supreme Court when in *Peoples Democratic Party v INEC*[36], the apex court held to the effect that, where an elected governor not yet sworn in accepted nomination as a vice presidential candidate, thus making INEC to declare both the governor and the deputy governor's seat vacant: the constitution provided for the deputy governor to become governor only if the governor dies. The court went further to construed the word 'die' in most liberal sense to include 'fizzle out' or vanish; synonyms which the court held were wide enough to accommodate what governor elect did, therefore foreclosing the necessity for another election[37].

The above decision by the apex court not only prohibit INEC from conducting a fresh election were such was already conducted, it carefully distinguished the facts as not constituting a pre election subject matter whose adjudication come within the jurisdiction of normal courts even up to the supreme court. Electoral justice and the deepening of democratic practices are upheld consequent upon the decision of the apex court. In particular, the right and opportunity to vote and to be elected, freedom of association, right to a fair and public hearing, freedom of movement, freedom of expression are all guaranteed as a result of electoral justice.

Departing from its non-interventionist policy in matters of impeachment proceedings, the courts have since not only intervened but nullified such proceedings on constitutional grounds: the court relied on its duty as the custodian and guardian of the constitution to intervene in appropriate cases[38]. Thus, the judiciary nullified impeachment proceedings, which it considered not to have been carried out strictly in accordance with the constitution: The court justified the intervention on the premise that section 188(10) of the constitution which ousted the jurisdiction of the court, on impeachment proceeding, did not deprive it jurisdiction to ensure that the constitution itself was not violated[39].

ii. Independent National Electoral Commission (INEC)

The Independent National Electoral Commission (INEC) is established by the Constitution of the Federal Republic of Nigeria[40] and given a further existential impetus by the Electoral Act[41]. It is a juridical personality that may sue or be sued in its corporate name.

Its functions include the following:

- Organizing, undertaking, and supervising all elections to the offices of the president and vice president, state governor and deputy governor, and members of the senate, the House of Representatives, and the House of Assembly of each state of the Federation;

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[34] (n 33)
[35] Ngige v. Obi (2007) 1 All N.L.R 336
[36] (2007) 11 NWLR (pt 1046) 565
[37] (n 32)
[38] J. Mbamalu, 'The Nigerian Judiciary: Impacting Election through Court Decision (2012) <http://wwww. Jumbolaw. com>articles accessed 15 February 2021.
[39] Ekpenyong v. Umanna (2010) 10 JELR, CA, Adeleke v Oyo State House of Assembly (2006) JELR 56693 CA.
[40] (2010) s. 1
[41] Electoral Act 2010; section 2

- Registering political parties in accordance with the provisions of the constitution and an Act of the National Assembly;
- Monitoring the organization and operation of the political parties, including their finances, conventions, congresses, and party primaries;
- Arranging for annual examination and auditing of the funds and accounts of political parties and publishing a report on that examination and audit for public information;
- Arranging and conducting the registration of persons qualified to vote, as well as preparing, maintaining and revising the register of voters for the purpose of any election under the constitution.
- Monitoring political campaigns and providing rules and regulations to govern the political parties;
- Ensuring that all electoral commissioners and newly elected and returning officers take and subscribe to the oath of office prescribed by law;
- Delegating any of its powers to any Resident Electoral Commissioners as needed.

Additionally, INEC is saddled with the responsibility of providing voter and civic education, promoting knowledge of sound democratic election process and conducting referenda as needed[42].

In order to foster and sustain the credibility of the electoral process toward ensuring electoral justice, the Independent National Electoral Commission has in the recent past undergone some reforms touching on its lack of structural independence as recommended by the Electoral Reform Committee[43].

(a) Funding

The Electoral Reform Committee, as part of its recommendations, put forward the necessity for guaranteeing the Independence of INEC from the Consolidated Fund. This put INEC at par with the way the judiciary and the National Assembly are funded[44]. The funding of INEC through the consolidated fund has helped to ensure and maintained the functional independence of INEC from other sectors of government and other political stakeholders thereby create a culture of professionalism in administering the electoral process.

b) Appointment and Dismissal Process of INEC Staff

Prior to the recommendations of the Electoral Reform Committee, it was easier to appoint and dismiss INEC Resident Electoral Commissioners through and subject to the presidential prerogative. However, with the reforms, a presidential appointment of a Resident Electoral Commissioner requires senate confirmation[45]. The appointment and dismissal process of the chairperson and the twelve National electoral commissioners of INEC have been tightened especially with reference to the chairperson whose removal by the president needs the support of a two-thirds majority of the senate[46]. This helps to ensure tenure protection for INEC officials with exception for grievous infractions that have been proven in accordance with standards of due process. INEC officials therefore discharge their duties not afraid of interference inform of arbitrary demotions, transfers, secondment and/or salary or benefit cut which intimately promotes electoral justice as a mark of credibility of the electoral process.

c) Power to Issue Rules to Regulate its own Procedure

The Independent National Electoral Commission no longer require presidential approval to regulate its own procedure or confer powers and impose duties on any officer or authority for the purpose of discharging its functions. This was eliminated by constitutional amendment, giving INEC absolute power to regulate itself for the purpose of carrying out its functions[47]. This gives further credence to INEC's capacity to discharge its core mandate without interference thereby ensure a credible electoral process. This has also helped to insulate INEC from the control of the president in the running of its affairs.

[42] E. Alemika & E.O Alemika, 'Democracy, Election and the Roles of Citizens' (2010) JPCP (No.1) 71-16

[43] H. Goitom, 'Nigeria: Election Laws;' (2011) <www.loc.gov/law/help/Nigeria-election-law/inde.php> accessed 10 march 2021

[44] Ibid

[45] (n 44)

[46] (Ibid)

[47] CRN (third schedule, S.160) as amended by constitution of the Federal Republic of Nigeria (First Alteration) Act N01 of 2010

The power of INEC to postpone elections within the general parameters set by the constitution, although wide, is not unlimited. INEC may only postpone an already set election date in the following circumstances;

> *if there is reason to believe that a serious breach of the peace is likely to occur if the election is proceeded with on that date or if it is impossible to conduct the elections as a result of natural disasters or other emergencies*[48].

The vagueness of the language in the above pronouncement appears to leave INEC with wide discretionary power. All that INEC is required to do to postpone an election is have a 'cogent and verifiable' reason, which could be as serious as riots or a simple logistical problem of not having sufficient voting materials in the polling **station**[49]**.** Despite INEC's insistence in having the tenure of office for elected persons (Governors) commenced on the day they took their first oath of office despite being declared as winners in a re-run-elections turned down by the Federal High Court and the Court of Appeal respectively, the National Assembly while affirming INEC's position through constitutional amendment stated that,

> *in the determination of the four year term (of a governor), where a re-run election has taken place and the person earlier sworn in wins the re-run-election, the time spent in the office before the date the election was annulled, shall be taken into account (to constitute part of the term*[50]

iii. The Police

The Nigeria Police Force is recognized as the lead agency for internal security in the country as stipulated in section 214 of the constitution of the Federal Republic of Nigeria 1999. Section 24 of the Electoral Act also mandates the Nigeria police to provide and ensure smooth conduct of election without any disturbance at polling units/stations, collation centres, counting of ballots, collations and declaration of election results[51]. This mandate complement the conventional role of the police to maintain peace and order in the society for people to have a sense of safety and order in going about their lawful business and other engagements for progress in all spheres of human endeavour. Consequently, the police being the lead security agency is expected to energetically exhibit proactive and reactive efforts toward public peace and safety[52].

Despite the enormity of electoral process challenges, especially on an election day, it is usually not strange to observe those who have lost election contest often, condemned the entire electoral process, accusing the electoral umpire and security agencies of conniving with political opponents to manipulate the electoral outcome in favour of the ruling political party. In the plethora of cases, the compromised position of the security agencies and the electoral umpire have occasioned avoidable loss of lives and property. As a result, the police often times tend to look away from arresting and prosecuting of perpetrators of electoral malfeasance which invariably robs off the need to ensure electoral justice before, during and after electoral process

Notwithstanding the creation of various electoral offences by the law and the punitive measures attached[53], offenders are very often not arrested nor prosecuted by the police or INEC's legal officers or

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[48] H. Goitom, Nigeria: Election Laws; (2011) <www.loc.gov/law/help/Nigeria-election-law/inde.php> accessed 10 March 2021.

[49] Ibid

[50] CFRN, S. 180 (2) (a) as amended by Constitution of the Federal Republic of Nigeria (First Alteration) Act N0. 1 of 2010.

[51] A Tobi, and G. Oikhaha, 'The Police and Election Administration in Nigeria;' (2018) 14 JPAFL www.jopafi.com accessed 13 March 2021

[52] Ibid

[53] Electoral Act 2010 (as amended) sections 12, 16(2) 24(1) 18(2), 31, 32, 77(i) (2), 81, 86, 91, 117 provide for Various offences with specific sections thereto.

legal practitioners appointed by the commission. Unfortunately, there are a myriad of issues that make the prosecution of offences by legal officers of the commission difficult[54]. These include, lack of time, expertise, resources and the capacity to shoulder such a responsibility in the face of conducting elections and managing post-election challenges[55]. Conversely, officers of the police force are often faced with the challenge of being deployed from contiguous states to the states conducting elections to ensure some level of neutrality.

Some of the officers are not knowledgeable about the code of conduct for officers on electoral duty hence not dispose to determining when an electoral offence has been committed. Most times, when offenders are arrested, there is hardly any detailed report adducing the reason for such arrest, owing to the fact that after the elections, the police officers report back to their regular place of duty. These events greatly inhibit the smooth processes of arrest, investigation and prosecution of electoral offenders to bring about electoral justice and deepens democratic governance.

In Defence of Human Rights Norms through Electoral Justice

Broadly speaking human rights may be regarded as those fundamental and inalienable rights which are essential for life as human being. They are possessed by every human being irrespective of his or her nationality, race, religion, sex, etc simply because he or she is a human being[56].

The universality of human rights has been repeatedly reaffirmed as in the Universal Declaration of Human Rights 1948. The First World Conference on Human Rights held in Teheran in 1948 considered that the declaration was an obligation for the members of the international community[57].

Furthermore, Chapter 4 of the Constitution of the Federal Republic of Nigeria 1999, provides for norms of fundamental rights dealing with, the right to life, right to dignity of the human person, right to personal liberty, right to fair hearing, right to private and family life, right to freedom of thought, conscience and religion, right to freedom of expression and the press, right to peaceful assembly and association, right to freedom of movement, right to freedom from discrimination, right to acquire and own immovable property anywhere in Nigeria, compulsory acquisition of property**[58]**.

Some of the human rights norms often violated due largely to the absence or denial of electoral justice include; freedom of speech, right to peaceful assembly and association, freedom of movement.

Freedom of Speech / Expression

Article 19 of the International Covenant on Civil and Political Rights[59] provide to the effect that, everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impact information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice[60].

Similarly, CFRN equally protects the right to freedom of expression by guaranteeing that every person is entitled to freedom of expression including freedom to hold opinions and to receive and impart ideas and information without interference. It is to be noted that electoral process remains a means whose central focus is the expression of political will of the people. Therefore, the right to canvas partisan views must, be firmly guarded before, during and after election periods. However, the interest of social order and respect for the rights of others require restraints on liberty of expression.

The right to vote is the product of democracy and a means of exercising the right to freedom of expression/speech. By voting, it presupposes that every adult citizen has the right to express his opinion

[54] F. Okoye, 'The Prosecution of Electoral Offenders in Nigeria Challenges and Possibilities, (Endrich-Ebert-stiftung Nigeria 2003) 25.
[55] Ibid
[56] S.K Kapoor, International Law & Human and Peoples Rights (Martinus Nijhoff Publishers, Netherlands 1997)5
[57] U.O Umuzurike, The African Charter on Human and Peoples' Rights (Martinus Nijhoff Publishers, Netherlands 1997) 5
[58] CFRN, sections 33-46
[59] ICCPR, 1986
[60] Ibid para. 2

by casting a vote at the time of election to indicate his preference in who should undertake the task of government. In the case of *Bowan v UK*[61]**,** the European Court of Human Rights was very emphatic when it stated thus:

> *Free elections and freedom of expression, particularly freedom of political debate, together form the bedrock of any democratic system---The two rights are inter-related and operate to reinforce each other--- for this reason it is particularly important in the period preceding an election that opinions and information of all kinds are permitted to circulate freely.*

The implication of the above pronouncement clearly support the fact that by protecting people's right to exchange information, debate ideas and express opinions, freedom of expression enables members of the public to decide which policies to support and how they wish to exercise their vote[62]. It is also pertinent to note that since the inception of the fourth republic in 1999, the 2011 general elections in Nigeria witnessed the use of card reader to help enhance transparency in our electoral process and minimize incidence of malpractice. This innovation contributed immensely in ensuring free and fair election through the elimination of unverified disenfranchisement of voters thereby allowed for freedom of expression through voting and ultimately electoral justice.

Right to Peaceful Assembly

A number of international instruments, while not specifically mentioning elections, do reflect the principal concerns underlying the concept of democratic elections[63]. The right to peaceful assembly is guaranteed by article 21 of the International Covenant on Civil and Political Rights; it states:

***The right to peaceful assembly shall be recognized. No* restriction may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary…**[64]

The CFRN 1999 as amended[65] guarantees the right to freedom of peaceful assembly and in particular the right to belong to any political party, trade union or any other association for the protection of the individual's interest. In right to freedom of peaceful assembly and of association are a critical means for individuals and groups of individuals to participate in public affairs[66]. The exercise of such rights provide avenues through which people can aggregate and voice their concerns and interests and endeavour to fashion governance that responds to their issues. In order to campaign and take part in public rallies, cast votes, hold candidates and elected officials accountable, participate in voter education activities and monitor elections the importance of the right to freedom of peaceful assembly and association cannot therefore be over stressed.

In order to be protected by law, an assembly must be peaceful[67]. Any limitation of this right must be in accordance with laid down rules necessary in a democratic society and consequent upon recognized grounds such as public order public, safety, national security, the protection of public health or morals taking cognizance of the least restrictive means also.

Prior to the 2019 general elections in Nigeria, a lot of impetus was accorded the political pluralism and participation of citizens in the events leading to the choice of people in governance. Consequently, there

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[61] (1999) 26 EHRR 1

[62] Equality and Human Rights law during an Election period www.equality/numanrights.comaccessed do march Section 40 2021.

[63] Centre for Human Rights and Elections: A handbook on the kegak Technical and Human rights Aspead of elections, <https://www.ohonr.org> accessed 24 March 2021.

[64] Ibid (n 63)

[65] Section 40

[66] Plan International, The Exercise if the rights to Freedom of Peaceful Assembly and of Association in the Context of elections', (2013) https://www.girlsrightsplatform.orgaccessed 24th March 2021.

[67] Human Rights and Elections: A Handbook on the legal, Technical and Human Rights aspects of Elections, Professional Training series (No. 2) United Nations Publicaiton, 2011)< https://www.ohchr.org>accessed 25 March 2021.

were nine registered political parties and 73 candidates for the position of the president in the 2019 contest, the largest number of parties and candidates since the country's 1999 transition to democracy[68]. These steps have further resulted in increased awareness and participation of people in political governance thereby promotes the right to freedom of assembly/association and electoral justice ultimately.

Freedom of Movement

International and national legal frameworks protect the right to freedom of movement for multidimensional purposes including electoral process. Movement for reasons of electoral management, voting operations, media coverage, voter registration, political candidates/supporters are all significant pre-conditions for a credible electoral process. Article 12 of ICCPR states that;

> *Everyone lawfully within the territory of a state shall within that territory, have the right to liberty of movement and freedom to choose his residence.*

This right is also guaranteed by the CFRN thus;

> *every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom*[69].

Therefore, in the context of election, all those participating in the electoral process should be able to move without restriction and fear, and have access to all electoral events and related venues[70].

However, a derogation of the right to movement may be invoked based on, reasonable suspicion of criminal offence in order to prevent the person from leaving Nigeria, removal of such person from Nigeria to any other country, criminal trial of such person outside Nigeria, imprisonment of such person following execution of sentence of a court of law in respect of a criminal offence of which the person has been found guilty[71]. General limitation of the liberty to movement also abound in the constitution in the interest of defence, public safety, public order, public morality or public health or for the purpose of protecting the rights and freedom of other persons[72]. Restriction of movement during electoral process[1] helps to ensure proper management of the entire electoral process as electoral malfeasance such as; illegal thumb printing of ballot papers, stuffing of ballot boxes with ballot papers, illegal possession of ballot boxes, ballot box snatching, intimidation/harassment of voters by hired political thugs among others are eliminated before, during and after the electoral process.

However, such restriction of movement in the context of electoral offences are still committed with impunity thereby suppress electoral justice through a deliberate infringement on human rights norms.

CONCLUSION

The integrity of any electoral process is substantially determined by the much attention and the protection of human rights norms before, during and after the elections. Electoral justice hinges on the promotion and protection of these human rights norms to drive the course of justice. Poor adherence to legal framework on the conduct of elections and the culture of impunity by both the mangers of our electoral process and members of the political class have continued to deprive our elections of fairness, credibility and transparency. Due to these anti-democratic forces, the basis for the acceptance of election results remain the pronouncements of the courts rather than the results often announced by independent National Electoral Commission (INEC) the body statutorily empowered as the umpire for the conduct of elections

[68] Nigeria: Freedom in the world (2020)< https://freedomhouse.org/countyr/Nigeria/freedom-world 2020 accessed 26 March 2021

[69] Section 41

[70] (n 67)

[71] Section 41 (2) (a) (b) (i) (ii) CFRN 1999

[72] Section 45 (i) CFRN 1999

in Nigeria. It is therefore imperative that all the stakeholders in our electoral process must acknowledge the importance of election as the cornerstone for a smooth democratic transition and rally round to see to the adoption of best practices for the conduct of elections in order to constantly ensure electoral justice through the protection and promotion of human rights norms during electoral process.

RECOMMENDATIONS

1. A legal framework to serve the goals of electoral justice through the protection of related freedoms and other human rights norms during electoral process.
2. Continuous voter education programmes to educate stakeholders on contemporary electoral process.
3. Electoral offenders should be appropriately sanctioned to de-emphasized the culture of impunity in our electoral process.
4. Electoral process mangers, including law enforcement personnel should be trained to respect voter's human rights before, during and after elections.
5. Electoral justice institutions should be empowered to be truly independent in order to dispense justice according to the law.
6. Application/adoption of modern techniques/standards in the management of electoral process so as to avoid human rights abuse during electoral process.